

**BEFORE THE HARYANA REAL ESTATE REGULATORY AUTHORITY,
GURUGRAM**

Complaint no.: 5754 of 2022
Date of filing: 18.08.2022
Order pronounced on: 22.02.2024

Shalini Gaur

R/o:- Shop no.50, Krishna Trading Company, Gaushala
Market opposite Haryana Roadways Workshop Gate,
Gurugram

Complainant

Versus

Shree Vardhman Infrahome Pvt. Ltd.

Regd. Office at:- 301, 3rd floor, Indraparkash Building, 21-
Barakhamba road, New Delhi-110001

Respondent

CORAM:

Shri Vijay Kumar Goyal

Member

APPEARANCE:

Shri Sushil Yadav (Advocate)
Shri Gaurav Rawat (Advocate)

Complainant
Respondent

ORDER

1. This complaint has been filed by the complainant/allottee under section 31 of the Real Estate (Regulation and Development) Act, 2016 (in short, the Act) read with rule 28 of the Haryana Real Estate (Regulation and Development) Rules, 2017 (in short, the Rules) for violation of section 11(4)(a) of the Act wherein it is *inter alia* prescribed that the promoter shall be responsible for all obligations, responsibilities and functions under the provision of the Act or the Rules and regulations made thereunder or to the allottee as per the agreement for sale executed *inter se*.

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A. Unit and project related details.

2. The particulars of unit details, sale consideration, the amount paid by the complainant, date of proposed handing over the possession, delay period, if any, have been detailed in the following tabular form:

S.No.	Particulars	Details
1.	Name and location of the project	"Shree Vardhman Flora", village Badshapur, Sector-90, Gurugram
2.	Project area	10.881 acres
3.	Nature of the project	Group housing colony
4.	DTCP license no. and validity status	23 of 2008 dated 11.02.2008 valid upto 10.02.2025
5.	Name of the Licensee	Moti Ram
6.	RERA registered/ not registered and validity status	Registered Registered vide no. 88 of 2017 dated 23.08.2017 valid up-to 30.06.2019
7.	Unit no.	1301, tower-B3 (page 15 of complaint)
8.	Unit area admeasuring	1875 sq. ft. (super area) (page 15 of complaint)
9.	Date of buyer agreement	04.02.2012 (page 13 of complaint)
10.	Endorsement in name of complainant	01.05.2012 (page 34 of complaint)
11.	Possession clause	<i>14 (a) Possession</i> <i>The construction of the flat is likely to be completed within a period of thirty six months (36) of commencement of construction of the particular tower/block in which the flat is located with a grace period of 6 months or receipts of sanction of building plans/revised plans and all other approvals subject of the building plans/revised plans and all other approvals subject to force majeure including any restrains/restrictions from any authorities, non-availability of building materials or dispute with construction agency /workforce and circumstances beyond the control of company and subject to timely payments by the buyer in the said complex.</i>

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		<i>(Emphasis Supplied)</i>
12.	Date of commencement of construction	14.05.2012 (as per the respondent submissions during proceedings dated 22.02.2024)
13.	Due date of possession	14.11.2015 (calculated from date of commencement of construction i.e. 14.05.2012 including grace period of 6 months being unqualified and conditional) <i>(*Note: inadvertently mentioned due date of possession 10.09.2015 vide proceedings dated 22.02.2024)</i>
14.	Basic sale consideration	Rs.42,69,375/- (page 16 of complaint)
15.	Amount paid by the complainant	Rs.55,46,170/- (page 39 & 40 of complaint)
16.	Occupation certificate	02.02.2022 (As per DTCP Website)
17.	Offer of possession	11.04.2022 (page 37 of complaint)

B. Facts of the complaint

3. The complainant has made the following submissions: -

- I. That the respondents gave advertisements in various leading newspapers about their forthcoming project named "Shree vardhman Flora" Sector 90, Gurgaon, promising various advantages of world-class amenities and timely completion/execution of the project etc. Relying on the promises and undertakings given by the respondent, the previous buyer booked an unit admeasuring 1875 sq. ft in the said project of the respondent for a total sale consideration of Rs.62,98,187/-. On dated 01.05.2012, the former buyer Mr. Sachin Vasudev endorsed the subject unit in the favor of the complainant.
- II. That the complainant made a payment of Rs.55,46,170/- to the respondent via different cheques on different dates.

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- III. That the flat buyer's agreement was executed on 04.02.2012 and as per the buyers agreement the respondents allotted a unit no.1301, tower no. B3 admeasuring super area of 1875 sq. ft. to the complainant. As per para no. 14(a) of the agreement, the respondent agreed to deliver the possession of the flat within 36 months from the date of commencement of construction.
- IV. That the complainant used to telephonically ask the respondent about the progress of the project, and the respondent always gave a false impression that the work was going on in full mode and accordingly asked for the payments which the complainant gave on time. When the complainant visited the site, she was shocked & surprised to see that construction work was not in progress and no one was present at the site to address the queries of the complainant. The respondent played fraud upon the complainant. The only intention of the respondent was to take payments for the flat without completing the work and not handing over the possession on time.
- V. That the respondent despite receiving more than 95% of the payments on time for all the demands raised subject unit and despite repeated requests and reminders over phone calls and personal visits of the complainant failed to deliver the possession of the allotted unit within the stipulated period.
- VI. That the construction of the block in which the complainant unit was booked with a promise by the respondent to deliver by 03.02.2015 but was not completed within time for the reasons best known to the respondent which clearly showed that the ulterior motive of the respondent was to extract money from the innocent people fraudulently.

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On 11.04.2022 the respondent sent offer of possession, but the condition of the flat was not habitable.

VII. That due to this omission on the part of the respondent, the complainant had been suffering from disruption in their living arrangement, mental torture, and agony, and also continued to incur severe financial losses. Same could have been avoided if the respondent had given possession of the subject unit on time. As per clause 14(b) of the agreement, it was agreed by the respondent in case of any delay, the respondent shall pay complainant compensation @ Rs.5/- per sq. ft. per month of the super area of the flat., clause of compensation was at such a nominal rate of Rs.5/- per sq. ft. per month for the period of delay which is unjust, and the respondent had exploited the complainant by not providing the possession of the flat even after a delay from the agreed possession plan. The respondent cannot escape the liability merely by mentioning a compensation clause in the agreement. The respondent incorporated the clause one-sided buyer's agreement and offered to pay a sum of Rs.5/- per sq. ft. for every month of delay. On calculation of amount in terms of financial charges, it comes to approximately @ 2% per annum rate of interest, whereas the respondent charges @ 18% per annum interest on delayed payment.

VIII. That on ground of parity and equity, the respondent be subjected to pay the same rate of interest and the respondent is liable to pay interest on the amount paid by the complainant from the promised date of possession until the flat was actually delivered.

C. Relief sought by the complainant:

4. The complainant has sought following relief(s):

- i. Direct the respondent to pay delayed possession charges.

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5. The present complaint was filed on 18.08.2022 in the Authority. On 18.10.2022, 15.02.2023, 08.08.2023 and 09.11.2023 the counsel for the respondent put in appearance and was directed to file the reply within 2 weeks in the registry of the Authority. However, despite specific directions and providing an opportunity of being heard, no written reply was filed by the respondent. Thus, keeping in view the opportunity given to the respondent, despite lapse of more than one year the respondent failed to file the reply in the registry. Therefore, in view of order dated 09.11.2023, the defence of the respondent was struck off. Nonetheless, on 22.02.2024 the respondent appeared along with reply and requested to put reply on record and the Authority acceded to his request, in order to go through relevant documents and gather important facts for fair adjudication of the case.

6. Copies of all the relevant documents have been filed and placed on the record. Their authenticity is not in dispute. Hence, the complaint can be decided on the basis of these undisputed documents and submissions made by the parties.

E. Jurisdiction of the Authority:

7. The authority has complete territorial and subject matter jurisdiction to adjudicate the present complaint for the reasons given below.

E.I Territorial Jurisdiction:

8. As per notification no. 1/92/2017-1TCP dated 14.12.2017 issued by Town and Country Planning Department, the jurisdiction of Real Estate Regulatory Authority, Gurugram shall be entire Gurugram District for all purpose with offices situated in Gurugram. In the present case, the project in question is situated within the planning area of Gurugram District. Therefore, this authority has complete territorial jurisdiction to deal with the present complaint.

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E.II Subject-matter Jurisdiction:

9. Section 11(4)(a) of the Act, 2016 provides that the promoter shall be responsible to the allottee as per agreement for sale. Section 11(4)(a) is reproduced as hereunder:

Section 11(4)(a)

Be responsible for all obligations, responsibilities and functions under the provisions of this Act or the rules and regulations made thereunder or to the allottees as per the agreement for sale, or to the association of allottees, as the case may be, till the conveyance of all the apartments, plots or buildings, as the case may be, to the allottees, or the common areas to the association of allottees or the competent authority, as the case may be;

Section 34-Functions of the Authority:

34(f) of the Act provides to ensure compliance of the obligations cast upon the promoters, the allottees and the real estate agents under this Act and the rules and regulations made thereunder.

10. So, in view of the provisions of the Act quoted above, the authority has complete jurisdiction to decide the complaint regarding non-compliance of obligations by the promoter leaving aside compensation which is to be decided by the adjudicating officer if pursued by the complainant at a later stage.

F. Findings on the relief sought by the complainant.

F.I. Direct the respondent to pay delayed possession charges.

11. The complainant is a subsequent allottee. The subject unit was originally allotted to Mr. Sachin Vasudev. A buyer's agreement was executed in this regard on 04.02.2012. Vide endorsement sheet dated 01.05.2012, the original allottee transferred all his rights and liabilities in relation to subject unit in the favor of present allottee i.e., Shalini Gaur. The Authority has decided this issue in the complaint bearing no. **4031 of 2019 titled as Varun Gupta V/s Emaar MGF Land Ltd.** wherein the Authority has held that in cases where subsequent allottee has stepped into the shoes of original allottee before the expiry of due date of handing over possession and before

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the coming into force of the Act, the subsequent allottee shall be entitled to delayed possession charges. So, the Authority is of the view that in cases where the subsequent allottee had stepped into the shoes of original allottee before the due date of handing over possession, the delayed possession charges shall be granted w.e.f. due date of handing over possession

12. Herein, the complainant intends to continue with the project and is seeking delay possession charges as provided under the proviso to section 18(1) of the Act. Sec 18(1) proviso reads as under.

"Section 18: - Return of amount and compensation

18(1). If the promoter fails to complete or is unable to give possession of an apartment, plot, or building, —

.....

Provided that where an allottee does not intend to withdraw from the project, he shall be paid, by the promoter, interest for every month of delay, till the handing over of the possession, at such rate as may be prescribed."

13. Clause 14(a) of floor buyer's agreement provides for handing over of possession and is reproduced below:

"Clause 14(a)

The construction of the flat is likely to be completed within a period of thirty six months (36) of commencement of construction of the particular tower/block in which the flat is located with a grace period of 6 months or receipts of sanction of building plans/ revised plans and all other approvals subject of the building plans/ revised plans and all other approvals subject to force majeure including any restrains/restrictions from any authorities, non-availability of building materials or dispute with construction agency /workforce and circumstances beyond the control of company and subject to timely payments by the buyer in the said complex....."

(Emphasis supplied)

14. The authority has gone through the possession clause of the agreement. At the outset, it is relevant to comment on the pre-set possession clause of the agreement wherein the possession has been subjected to all kinds of terms and conditions of this agreement and the complainant not being in default

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under any provision of this agreement and in compliance with all provisions, formalities and documentation as prescribed by the promoter. The drafting of this clause and incorporation of such conditions is not only vague and uncertain but so heavily loaded in favour of the promoter and against the allottee that even a single default by the allottee in fulfilling formalities and documentations etc. as prescribed by the promoter may make the possession clause irrelevant for the purpose of allottee and the commitment date for handing over possession loses its meaning.

15. The buyer's agreement is a pivotal legal document which should ensure that the rights and liabilities of both builder/promoter and buyer/allottee are protected candidly. The flat agreement lays down the terms that govern the sale of different kinds of properties like residentials, commercials etc. between the builder and the buyer. It is in the interest of both the parties to have a well-drafted buyer's agreement which would thereby protect the rights of both the builder and buyer in the unfortunate event of a dispute that may arise. It should be drafted in the simple and unambiguous language which may be understood by a common man with an ordinary educational background. It should contain a provision with regard to stipulated time of delivery of possession of the unit, plot or building, as the case may be and the right of the buyer/allottee in case of delay in possession of the unit.
16. **Due date of possession and admissibility of grace period:** The promoter has proposed to hand over the possession of the said unit within 36 months from the date of commencement of construction and it is further provided in agreement that promoter shall be entitled to a grace period of six months. The construction of the subject tower commenced from 14.05.2012 as per the customer ledger dated 23.02.2023 issued by the respondent. Therefore,

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the due date of possession comes out to be 14.11.2015 including grace period of six months being unqualified and unconditional.

17. Admissibility of delay possession charges at prescribed rate of interest:

The complainant is seeking delay possession charges however, proviso to section 18 provides that where an allottee does not intend to withdraw from the project, he shall be paid, by the promoter, interest for every month of delay, till the handing over of possession, at such rate as may be prescribed and it has been prescribed under rule 15 of the rules. Rule 15 has been reproduced as under:

Rule 15. Prescribed rate of interest- [Proviso to section 12, section 18 and sub-section (4) and subsection (7) of section 19]

(1) For the purpose of proviso to section 12; section 18; and sub-sections (4) and (7) of section 19, the "interest at the rate prescribed" shall be the State Bank of India highest marginal cost of lending rate +2%.

Provided that in case the State Bank of India marginal cost of lending rate (MCLR) is not in use, it shall be replaced by such benchmark lending rates which the State Bank of India may fix from time to time for lending to the general public.

18. The legislature in its wisdom in the subordinate legislation under the provision of rule 15 of the rules, has determined the prescribed rate of interest. The rate of interest so determined by the legislature, is reasonable and if the said rule is followed to award the interest, it will ensure uniform practice in all the cases.

19. Consequently, as per website of the State Bank of India i.e., <https://sbi.co.in>, the marginal cost of lending rate (in short, MCLR) as on date i.e., 22.02.2024 is @ 8.85 %. Accordingly, the prescribed rate of interest will be marginal cost of lending rate +2% i.e., 10.85%.

20. The definition of term 'interest' as defined under section 2(z) of the Act provides that the rate of interest chargeable from the allottee by the

promoter, in case of default, shall be equal to the rate of interest which the promoter shall be liable to pay the allottee, in case of default. The relevant section is reproduced below:

"(za) "interest" means the rates of interest payable by the promoter or the allottee, as the case may be.

Explanation. —For the purpose of this clause—

- (i) the rate of interest chargeable from the allottee by the promoter, in case of default, shall be equal to the rate of interest which the promoter shall be liable to pay the allottee, in case of default.*
- (ii) the interest payable by the promoter to the allottee shall be from the date the promoter received the amount or any part thereof till the date the amount or part thereof and interest thereon is refunded, and the interest payable by the allottee to the promoter shall be from the date the allottee defaults in payment to the promoter till the date it is paid;"*

21. Therefore, interest on the delay payments from the complainant shall be charged at the prescribed rate i.e., 10.85 % by the respondent/promoter which is the same as is being granted to them in case of delayed possession charges.

22. On consideration of the circumstances, the evidence and other record and submissions made by the parties, the authority is satisfied that the respondent is in contravention of the provisions of the Act. By virtue of clause 14(a) of the buyer's agreement executed between the parties on 04.02.2012, the possession of the said unit was to be delivered within a period 36 months from the date commencement of construction i.e. 10.03.2012 and it is further provided in agreement that promoter shall be entitled for a grace period of six months. As far as grace period is concerned, the same is allowed being unconditional and unqualified. Therefore, the due date of handing over of possession comes out to be 14.11.2015. In the present complaint the complainant was offered possession by the respondent on 11.04.2022 after obtaining occupation certificate dated

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02.02.2022 from the competent authority. The authority is of view that there is a delay on the part of the respondent to offer physical possession of the allotted unit to the complainant as per the terms and conditions of the buyer's agreement dated 04.02.2012 executed between the parties.

23. Section 19(10) of the Act obligates the allottee to take possession of the subject unit within 2 months from the date of receipt of occupation certificate. In the present complaint, the occupation certificate was granted by the competent authority on 02.02.2022. The respondent offered the possession of the unit in question to the complainant only on 11.04.2022, so it can be said that the complainant came to know about the occupation certificate only upon the date of offer of possession. Therefore, in the interest of natural justice, the complainant should be given 2 months' time from the date of offer of possession. These 2 months' of reasonable time is being given to the complainant keeping in mind that even after intimation of possession practically he has to arrange a lot of logistics and requisite documents including but not limited to inspection of the completely finished unit but this is subject to that the unit being handed over at the time of taking possession is in habitable condition. It is further clarified that the delay possession charges shall be payable from the due date of possession till the expiry of 2 months from the date of offer of possession (11.04.2022) which comes out to be 11.06.2022.

24. Accordingly, the non-compliance of the mandate contained in section 11(4)(a) read with section 18(1) of the Act on the part of the respondent is established. As such the complainant are entitled to delay possession charges at prescribed rate of the interest @ 10.85 % p.a. w.e.f. 14.11.2015 till expiry of 2 months from the date of offer of possession (11.04.2022) i.e., up to

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11.06.2022 as per provisions of section 18(1) of the Act read with rule 15 of the rule.

H. Directions of the authority

25. Hence, the authority hereby passes this order and issues the following directions under section 37 of the Act to ensure compliance of obligations cast upon the promoter as per the function entrusted to the authority under section 34(f):

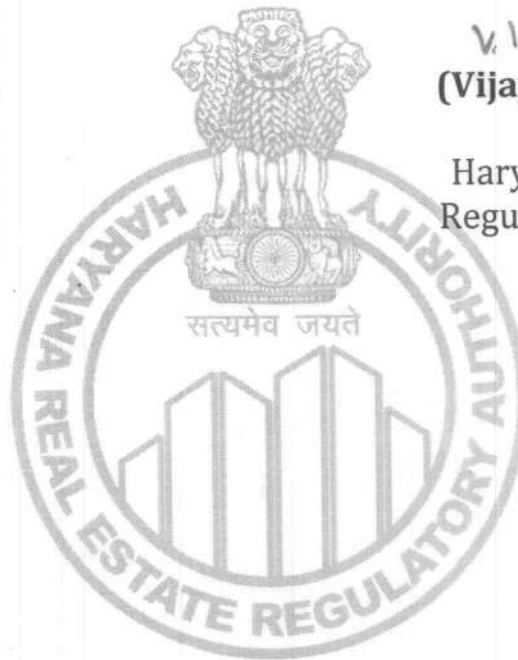
- i. The respondent is directed to pay interest to the complainant against the paid-up amount at the prescribed rate i.e., 10.85% per annum for every month of delay on the amount paid by the complainant from due date of possession i.e., 14.11.2015 till expiry of 2 months from the date of offer of possession (11.04.2022) i.e., up to 11.06.2022 only. The arrears of interest accrued so far shall be paid to the complainant within 90 days from the date of this order as per rule 16(2) of the rules.
- ii. The rate of interest chargeable from the allottee by the promoter, in case of default shall be charged at the prescribed rate i.e., 10.85% by the respondent/promoter which is the same rate of interest which the promoter shall be liable to pay the allottee, in case of default i.e., the delayed possession charges as per section 2(za) of the Act.
- iii. The complainant is directed to pay outstanding dues, if any, after adjustment of delay possession charges within a period of 30 days. The respondent is directed to handover the physical possession of the unit within 30 days to the complainant/allottee.
- iv. The respondent shall not charge anything from the complainant which is not the part of the buyer's agreement. The respondent is also not entitled to claim holding charges from the complainant/allottees at any

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point of time even after being part of the builder buyer agreement as per law settled by Hon'ble Supreme Court in civil appeal nos. 3864-3889/2020 decided on 14.12.2020.

26. Complaint stands disposed of.
27. File be consigned to registry.

Dated:22.02.2024



V.1-3
(Vijay Kumar Goyal)
Member
Haryana Real Estate
Regulatory Authority,
Gurugram

HARERA
GURUGRAM